

## LABOUR DEPARTMENT

The 25th January, 1983

No. 9(1)82-6Lab/493.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Hindustan Machine and Castings, Plot No. 36, Sector 27-A, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 216 of 1982

between

SHRI CHARAN SINGH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S HINDUSTAN MACHINE AND CASTINGS PLOT NO. 36, SECTOR 27-A, FARIDABAD.

Shri M. K. Bhandari, for the workman.

Shri R. C. Sharma, for the respondent-management.

## AWARD

This reference No. 216 of 1982 has been referred to this Court, by the Hon'ble Governor of Haryana,—vide his order No. ID/PD/95/82/36544, dated 6th August, 1982 under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between Shri Charan Singh, workman and the respondent management of M/s Hindustan Machine and Castings, Plot No. 36, Sector 27-A, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Charan Singh was justified and in order? If not, to what relief is he entitled?

Notice were issued to the parties. On receiving this reference order, the parties appeared and filed their pleadings. The case of the workman according to demand notice is that he joined the service of respondent on 22nd February, 1977 as Assistant Shaperman and was drawing Rs 355 p.m. and his services were terminated by letter dated 9th May, 1982 due to union activities and he is entitled for his reinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that the workman has not filed the claim statement and the demand notice is not clear. The claimant was working as shaperman and he was only shaperman in the factory. Due to recession in the factory, he was surplus and his services were retrenched on 14th May, 1982 and his dues were offered. The letter dated 9th May, 1982 was cancelled and workman was given another letter dated 14th May, 1982 and full wages were offered upto 14th May, 1982. On the pleadings of the parties, following issue was framed:—

1. Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

My findings on the issues is as under:—

Issue No. 1:—

The representative of the respondent argued on this issue that as stated by Shri K. L. Saberwal, Manager of the respondent factory as MW-1, their concerned used to work as job work of M/s. Escorts and Eicher. There was recession in these two factories and they received 50% orders from these factories due to these recessions. The claimant was working as Assistant Shaperman, who was only shaperman in the factory and when the respondent did not receive the full orders of Escorts and Eicher Tractor, his service was surplus and there was no job for him. So the workman was given the notice along with the 40 other workman of the different category. The retrenchment notice Ex. M-1 was sent to the workman through registered letter. The postal receipt is Ex. M-2 which received back which is Ex. M-3. The money order of the dues of the workman was also sent through Ex. M-4 and M-5. The amount sent through these money orders were Rs. 1000/- and Rs. 436/65 P. These money orders were sent on the address of the union because there was no other address of the respondent. The Union refused to receive these money orders and they received back,—vide Ex. M-6 and M-7. The representative of the respondent further argued that due to recession of the work in the factory, the workman was surplus and so he was retrenched along with other 40 workmen, which is admitted by the workman in his statement as WW-1 and his co-workman Shri Lachhman Parshad as WW-2. After this retrenchment, these workmen sat on dharna before the factory. After some time they finished the dharna and took their full and final. The workman did not turn up to the respondent to take his full and final which is pending with the respondent. So it is not a case of termination but a case of retrenchment and the respondent has retrenched the workman as surplus.

The representative of the workman argued on this issue that as stated by the workman as WW-1 he was appointed on 2nd February, 1977 as assistant Shaperman and drawing Rs 355 p.m. There were two shapermen in the factory. The other was Lachman Parshad, who joined the service after joining the claimant. He was not given any seniority list before termination. The other workman Shri Lachman Parshad continued to work as shaperman, though he was junior to him. He was given a chargesheet Ex. W-1 on 4th May, 1982 which was received by him on 5th May, 1982 at 10.00 a.m. and given the reply on 5th May, 1982 which is Ex. W-2. The respondent gave a letter Ex. W-3 for the termination of the service, and he was stopped at the gate without offering any retrenchment compensation or notice pay. The representative of the workman further argued that Ex. W-3 was termination letter from the service dated 9th May, 1982 in which the respondent has stated that "Your services are no longer required as there was no work with them with effect from 9th April, 1982 and he can collect his dues". The letter Ex. W-3 was given because he was given the charge-sheet and the workman has replied the same. So the respondent did not want to keep the workman in service and so they terminated the service of the workman on 9th May, 1982 without offering any retrenchment compensation and it was not one month's notice according to the Section 25-F of the Industrial Disputes Act, 1947. So his services were terminated on 9th May, 1982 as he was stopped at the gate on the same day with this letter Ex. W-3. Then the respondent found some defect in the letter which was not one month's notice for the retrenchment and there was nothing about the offering of the retrenchment compensation as provided under section 25-F of the Industrial Disputes Act. So they sent Ex. M-1 dated 14th May, 1982 through a registered letter to the workman which was not received by the workman as stated by the workman in his statement as WW-1. He further argued that as stated by the workman in his statement, Ex. M-6 and M-7 were not sent to him at his address and the claim of the workman is not properly given in the accounts given in Ex. M-1. The respondent have not produced any document to prove this fact that he was appointed before two years from the date of termination. The workman has stated in his demand notice and in his statement that he joined the service of the respondent from 2nd February, 1977. The respondent has concealed this fact of the appointment of the workman and they have offered only 2½ years compensation in the letter Ex. M. 1. So the termination was not retrenchment and it was a termination due to allegations is Ex. W-1. The respondent has stated in their statements in the letter Ex. W-1 that only one shaperman was working with the respondent and there was no work of the shaperman. So he was retrenched. But the fact was that Shri Lachman Parshad, who has come to depose before this Court as WW-2 was also Assistant Shaperman in the factory who has stated that he was Assistant Shaperman and appointed when the workman was working in the factory and was junior to him and removed after the termination of claimant, clearly prove that it was not retrenchment according to law. If they want to retrench, they should have retrenched the junior most who has come in the court and depose that he joined the service after the claimant. So it is not retrenchment and a termination.

After hearing the arguments of both the parties, and going through the file, I agree with the arguments put forward by the workman. The letter Ex. W-1 to W-3 are the letters which are admitted by the respondent witness as MW-1. Ex. W-1 is a chargesheet against the workman and Ex. W-2 is the reply of the workman and after these two letters the respondent gave letter Ex. W-3 to the workman dated 9th May, 1982 which creates doubts in the mind that the workman was not retrenched but terminated. The respondent could not rebut the evidence of Shri Lachman Parshad, W.W. 2, who has come and deposed that he was junior from the claimant and he was removed from the service after the service of the claimant. So it was not a retrenchment and the letter Ex. M-1 is also not clear about the retrenchment. The letter Ex. M-1 was sent through registered post, which was not received by the claimant and there is no value of this letter in the eye of law when it was not received by the workman, which was also received back by the respondent. So the workman was terminated, which is not justified according to law and the workman is entitled for his reinstatement with continuity of service and full back wages.

This be read in answer to this reference.

Dated, the 5th January, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana, Faridabad.

Endorsement No. 64, dated the 10th January, 1983.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana, Faridabad.